Supreme Court, U.S.
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No. 02-1080

In the Supreme Court of the United States

GENERAL DYNAMICS LAND SYSTEMS, INC.,
Petitioner,

v.

DENNIS CLINE, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does Respondents' amended complaint state a claim for age discrimination?

PARTIES TO THE PROCEEDINGS BELOW

All parties to the proceedings below are named in the caption in Petitioner's Petition for a Writ of Certiorari. Respondents do not have any corporate affiliations.

TABLE OF CONTENTS

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS BELOW ii

TABLE OF CONTENTS iii

TABLE OF CASES, CITATIONS, AUTHORITIES . . v

I. INTRODUCTION 1

II. REASONS TO DENY THE PETITION 3

A. The Sixth Circuit's Opinion Is Not in Conflict with That of Another United States Court of Appeals 3

1. This Case Does Not Involve Reverse Discrimination 3

2. There Is No Conflict with *Hamilton v. Caterpillar* 5

3. There Is No Conflict with *Schuler v. Polaroid Corp* 7

a. Schuler's Facts Are Not Analogous 7

b. Petitioner's Reliance on *Schuler* is Misplaced 8

B. The Sixth Circuit's Opinion Is Not in Conflict with the Precedent of This Court 9

1. There Is No Conflict with *O'Connor v. Consolidated Coin Caterers Corp* 9

2. There Is No Conflict with *Hazen Paper Co. v. Biggins* 10

C. The Sixth Circuit's Opinion Is Not Inconsistent with Congressional Purpose and Intent 11

D. The Sixth Circuit's Decision Does Not Pose a Burdensome Impact 16

1. Programs and Policies Will Not Be Threatened 16

2. There Will Be No Increased Difficulty in Defending Age Discrimination Suits 18

III CONCLUSION 19

TABLE OF CASES, CITATIONS, AUTHORITIES

Federal Cases

United States Supreme Court

Browning v. Clinton,
292 Fed.3d 235 (C.A.D.C. 2002) 1

Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.,
530 U.S. 1, 120 S.Ct. 1942,
147 L.Ed.2d 1 (2000) 12

Hazen Paper Co. v. Biggins,
507 U.S. 604, 113 S.Ct. 1701,
123 L. Ed.2d 338 (1993) 10, 11

Negonsott v. Samuels,
507 U.S. 99, 113 S.Ct. 1119,
122 L.Ed.2d 457 12

O'Connor v. Consolidated Coin Caters Corp.,
517 U.S. 308, 116 S.Ct. 1307,
134 L.Ed.2d 433 (1996) 9, 13

Swierkiewicz v. Sorema N. A.,
534 U.S. 506, 122 S.Ct. 992,
152 L.Ed.2d 1 (2002) 18

Circuit Courts

Bodnar v. Synpol, Inc.,
843 F.2d 190 (5th Cir.1988) 8

Cline v. General Dynamics,
296 F.3d 466 (6th Cir. 2002) . . . . . *Passim*

Gray v. New England Tel. and Tel. Co.,
792 F.2d 251 (1st Cir. 1986) 8

Hamilton v. Caterpillar, Inc.,
966 F.2d 1226 (7th Cir. 1992) 5, 6, 7

Pierce v. Commonwealth Life Ins. Co.,
40 F.3d 796 (6th Cir. 1994) 3

District Courts

Cline v. General Dynamics Land Systems, Inc.,
98 F.Supp.2d 846 (N.D. Ohio 2000) 1

Jones v. Slater Steels Corp.,
660 F.Supp. 1570 (N.D. Ind. 1987) 3

Murphy v. Milwaukee Area Technical College,
976 F.Supp. 1212 (E.D. Wis. 1997) 3

Schuler v. Polaroid Corp.,
848 F.2d 276 (1st Cir. 1988) 7, 8, 9

Federal Statutes

29 U.S.C. § 621 16

29 U.S.C. § 623 (also referred to generally as the ADEA)
. . . . . *Passim*

29 U.S.C. § 631 . . . . . 9, 13, 14

Federal Rules

Fed. R. Civ. P. 12(B) 1

Federal Regulations

29 C.F.R. § 1625.2 . . . . . 6, 7, 15, 17

I. INTRODUCTION

The present case involves a well-reasoned decision by the United States Court of Appeals for the Sixth Circuit. The plain language of the Age Discrimination in Employment Act (ADEA) was applied to a situation where there was direct evidence of age discrimination. Rescission of continued health insurance benefits after retirement by an employer to employees age 40-49 solely on the basis of age constitutes age discrimination.

Petitioner, General Dynamics Land Systems, Inc., has petitioned this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit set forth in *Cline v. General Dynamics*, 296 F.3d 466 (6th Cir. 2002). Petitioner asserts the Sixth Circuit's decision conflicts with those of other circuits and this Court, is contrary to congressional purpose and intent and will reek general havoc if not reversed. Petitioners' claims and fears are overstated and exaggerated.

The Sixth Circuit's decision does not permit "reverse age discrimination." The core issue here is whether Respondents' amended complaint should be dismissed for failure to state a claim. Put simply, does Respondents' amended complaint state a claim for age discrimination? Since this case involves a motion pursuant to Fed. R. Civ. P. 12(B), dismissal is appropriate only if Respondents can prove no set of facts in support of their claim which would entitle them to relief. *Browning v. Clinton*, 292 Fed.3d 235, 242 (C.A.D.C. 2002) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99 (1957)). The Sixth Circuit reversed the trial court's grant of Petitioner's motion to dismiss. *See Cline v. General Dynamics Land Systems, Inc.*, 98 F.Supp.2d 846 (N.D. Ohio 2000).

The Sixth Circuit's opinion is not in conflict with any decisions of this Court or United States courts of appeals. Neither does the opinion depart from the accepted and usual course of judicial proceedings. Finally, the Sixth Circuit's decision does not involve a question of federal law that has not been, but should be, settled by this Court.

Respondents, employees of Petitioner, were between the ages of 40-49 as of July 1, 1997. *Cline*, 296 F.3d at 468. Pursuant to a prior collective bargaining agreement (CBA1), they were entitled to receive continued health insurance benefits upon retirement. *Id.* However, Petitioner executed a successor collective bargaining agreement (CBA2) which rescinded the continued health insurance benefits from Respondents by limiting health insurance coverage upon retirement to employees who were 50 years of age or older as of July 1, 1997. In other words, since Respondents were not 50 on that date, their entitlement to benefits was permanently extinguished and would not be revived even when they turned 50.

The Equal Employment Opportunity Commission (EEOC) agreed with Respondents, finding that CBA2 adversely affected them as a result of their age. *Id.* at 468. In *Cline*, the dissenter was U.S. District Court Judge Glenn M. Williams, a senior judge for the Western District of Virginia, who was sitting by designation. The majority and concurring opinions were authored by Sixth Circuit panel members.

II. REASONS TO DENY THE PETITION

A. The Sixth Circuit's Opinion Is Not in Conflict with That of Another United States Court of Appeals.

1. This Case Does Not Involve Reverse Discrimination.

Petitioner contends that the ADEA does not recognize claims for "reverse discrimination" and that the Sixth Circuit's holding that reverse discrimination is cognizable under the ADEA conflicts with virtually every other court to consider the question. (See Petition, p. 7-8). However, the present case does not involve reverse discrimination.

Reverse discrimination involves a claim brought by someone **outside** the protected class. *See eg., Murphy v. Milwaukee Area Technical College*, 976 F.Supp. 1212, 1216 (E.D. Wis. 1997) (Strict application of the *McDonnell Douglas* standard would eliminate all cases of reverse discrimination by preventing a plaintiff from making out a prima facie case because, by definition, the plaintiff is not a member of a protected class); *Pierce v. Commonwealth Life Ins. Co.*, 40 F.3d 796, 801 (6th Cir. 1994) (a prima facie showing of reverse discrimination requires a showing that the employer discriminated against employees who were similarly-situated but not members of the protected class); *Jones v. Slater Steels Corp.*, 660 F.Supp. 1570, 1575 (N.D. Ind. 1987) (*prima facie* test in reverse discrimination cases must be modified to reflect the fact that the majority, rather than the minority, is the object of reverse discrimination). This is not the case here. Respondents are members of the protected class.

To emphasize this point: **would any court characterize a civil rights/discrimination claim brought by an African-American citizen as "reverse discrimination?" Clearly not, because the African-American would be a member of the protected class.**

As stated by the Sixth Circuit, the ADEA forbids employers from defining the terms and benefits of any individual's employment based solely on his/her age. *Cline*, 296 F.3d at 469 (citing 29 U.S.C. § 623(a)(1)). "Any individual" is defined as individuals who are at least 40 years old. *Id*. This is a straightforward formula.

First, is an individual at least 40 years old? Second, did the employer define that individual's benefits based solely on his/her age? In the present case, Respondents were age 40 or older and their benefits were rescinded solely because of their age. This is a claim involving direct evidence of age discrimination since Respondents are members of the protected class and allege a rescission of their benefits due to their age. *See Cline*, 296 F.3d at 471.

Petitioner claims that Sixth Circuit held that reverse discrimination is cognizable under the ADEA. (See Petition, p. 7). This is not true. The majority opinion explained:

> even if we granted the district court its definition of "reverse discrimination," it is clear that Cline and his classmates did not suffer "reverse age discrimination." By the plain language of the ADEA they are the victims of "age discrimination."

Cline, 296 F.3d at 471. Further explanation followed:

> the fact that some members within the protected class were beneficiaries of the discriminatory action of which other members of the protected class--the plaintiffs--were victims, does not somehow suspend the language of the statute, which prohibits age discrimination against "any individual" within the protected class.

Id. at 472. Therefore, the decision is not in conflict with the cases cited by Petitioner for the proposition that the ADEA does not permit reverse discrimination claims. This case does not involve reverse discrimination.

2. There Is No Conflict with *Hamilton v. Caterpillar*.

Petitioner asserts that the "Sixth Circuit's holding is diametrically opposed to other decisions addressing the same issue on almost precisely the same facts." (See Petition, p. 9). Citing *Hamilton v. Caterpillar, Inc.*, 966 F.2d 1226 (7th Cir. 1992), Petitioner incorrectly claims that the facts in *Hamilton* are virtually identical to those presented in the present one. (See Petition, p. 9).

In *Hamilton*, the employer negotiated the establishment of a new special early retirement program with the plaintiffs' union in anticipation of closing several plants. *Hamilton,* 966 F.2d at 1226-27. The key term here is new. Previously, early retirement benefits were only available to workers 60 years or older. *Id*. at 1227. The newly negotiated program granted previously unavailable benefits to workers age 50 and older. *Id*.

Thus, in *Hamilton*, the employer provided additional benefits to workers age 50 or older. In contrast, Petitioner was not closing any plants and did not extend new benefits to workers age 50 and older. Instead, employees age 50 and older were permitted to keep their benefits while Respondents' (age 40-49) benefits were rescinded. These differences are significant. **Offering supplementary benefits to a select group is hardly the same as denying benefits to a group because of their age**.

Moreover, the special early retirement program at issue in *Hamilton* was essentially a severance package offered only to employees age 50 and older, which is permissible under 29 C.F.R. § 1625.2(b), which reads:

> The **extension** of additional benefits, such as increased severance pay, to older employees within the protected group may be lawful if an employer has a reasonable basis to conclude that those benefits will counteract problems related to age discrimination.

Id. (emphasis added). Thus, the discussion in *Hamilton* about reverse age discrimination was unnecessary. The carving out of a subset of older employees within the protected group was lawful because new benefits were extended to those employees.

Extension of severance benefits to older employees displaced due to plant closings might legitimately counteract problems related to age. Employees would be immediately faced with having to find another job. Those over 50 would likely have more difficulty relocating and gaining new employment.

On the other hand, any impact related to post-retirement health care benefits (such as in the instant case) would not impact the employee until he/she retires. The employees who were 50 as of July 1, 1997, will have benefits while those who were age 40-49 on that date will not.

Further, Petitioner's health care benefits are not the same as severance payments. Additionally, there was no extension of new benefits. Respondents' benefits were revoked. Accordingly, although the conduct in *Hamilton* might not have violated the ADEA, the facts and reasoning in that opinion are not applicable to the present circumstances. Therefore, there is no conflict and the Sixth Circuit case and *Hamilton* may be reconciled through 29 C.F.R. § 1625.2(b)'s authorization to extend additional benefits to older employees.

3. There Is No Conflict with *Schuler v. Polaroid Corp.*

Petitioner states that the Sixth Circuit's decision is also inconsistent with *Schuler v. Polaroid Corp.*, 848 F.2d 276 (1st Cir. 1988). This is not true.

a. *Schuler's* Facts Are Not Analogous.

There are several factual differences between *Schuler* and the present case. First, *Schuler* involved a severance plan as opposed to a collective bargaining agreement. *Id.* at 278. Second, there was no allegation that older workers were treated less favorably than younger workers. Additionally, unlike the CBA in the present case, which permits benefits solely on the basis of age, the *Schuler* severance plan offered greater benefits to those with more seniority. *Id.* In other words, there was no direct evidence of age discrimination.

Accordingly, the facts in *Schuler* are drastically different than those in the present case. As a result, there can be no conflict between that case and the decision below. It follows then that there is no need for this Court to resolve any conflict where none exists.

b. Petitioner's Reliance on *Schuler* is Misplaced.

Petitioner contends that *Schuler* stands for the proposition that the ADEA does not forbid treating older persons more generously than others. (See Petition, p. 10). However, other than that isolated statement, which was separate and apart from the material holding, there was no in-depth analysis or application of this statement to the factual circumstances. Instead, the court simply supported this statement by citing two cases.

The first it cited was *Bodnar v. Synpol, Inc.*, 843 F.2d 190 (5th Cir.1988), in which non-union employees sued regarding a special early retirement incentive program. *Id.* at 191-92. However, this case contains no language even inferring that the ADEA permits treating older persons more generously than others in the protected class. As a result, it fails to support the proposition for which it was cited in *Schuler*.

The second case cited was *Gray v. New England Tel. and Tel. Co.*, 792 F.2d 251 (1st Cir. 1986). It involved a voluntary, early-retirement program. *Id.* at 255. Curiously, it too failed to even allude that the ADEA allows more generous treatment of older persons than others in the protected class. Thus, it also does not support the proposition in *Schuler*.

In short, the Sixth Circuit's decision does not conflict with *Schuler*. The case involved a severance plan linked to seniority, not age. Additionally, the language cited by Petitioner is a mere isolated and unsupported statement in that opinion. The opinion cited two cases for the principle that the ADEA does not forbid treating older persons more generously than others. However, those cases did not support that proposition. Accordingly, there is no need for this Court to reconcile any conflict between *Schuler* and the present case.

B. The Sixth Circuit's Opinion Is Not in Conflict with the Precedent of This Court.

1. There Is No Conflict with *O'Connor v. Consolidated Coin Caterers Corp.*

Petitioner argues that the Sixth Circuit's opinion cannot be reconciled with this Court's decision in *O'Connor v. Consolidated Coin Caterers Corp.*, 517 U.S. 308, 116 S.Ct. 1307, 134 L.Ed.2d 433 (1996). However, Circuit Judge Cole gave three reasons why it can. He explained:

> First, the Supreme Court was not considering reverse age discrimination in *Consolidated Coin*. Second, the *Consolidated Coin* holding acknowledged that members within the protected class may sue one another. Third, we follow the same recipe as the Supreme Court did-we look to the plain text of §§ 623(a)(1) and 631(a) to determine whether so-called reverse age discrimination is actionable under the ADEA. Based upon the combined

> effect of these three reasons, I do not believe that Supreme Court precedent dictates a result different than what we reach today.

Cline, 296 F.3d at 475.

Petitioner criticizes Judge Cole's explanation as a "blithe assumption that this Court did not mean what it said in *O'Connor*." (See Petition, p. 12). Yet, *O'Connor* is distinguishable as well. That case involved indirect evidence of discrimination and utilized the *McDonnell Douglas* test. *O'Connor*, 517 U.S. at 310. The present case involves direct evidence of age discrimination. *Cline*, 296 F.3d at 475. Thus, the elements of establishing a prima facie case do not come into play and the "substantially younger" requirement does not apply. As a result, there can be no conflict since the two cases are not analogous.

2. There Is No Conflict with *Hazen Paper Co. v. Biggins*.

Petitioner also contends that the decision below runs counter to this Court's decision in *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 113 S.Ct. 1701, 123 L. Ed.2d 338 (1993). (See Petition, p. 12). Petitioner focuses on this Court's reference to the use of the phrase "older workers." *Id*. For example, Petitioner claims that *Biggins* explained that the prohibited stereotypes that the ADEA seeks to eliminate are those adverse to older employees. *Id*. at 12-13. In conclusion, Petitioner states that the Sixth Circuit's decision subverts the very purpose of the ADEA and its primary aim to eradicate outmoded stereotypes about older Americans' proper place in the workforce. *Id*. at 13.

In *Biggins*, this Court also held that "[a]n employee who is younger than 40 [is] outside the class of older workers as defined by the ADEA." *Biggins*, 507 U.S. at 612, 113 S.Ct. at 1707. Thus, this Court considered anyone 40 years of age or older to be within the protected class and an "older worker."

This Court did not appear to view the definition of older workers as narrowly as Petitioner, which was critically described by the Sixth Circuit as: "those individuals who are at least 40 years of age and, in addition, relatively older than any other group of employees with whom they are compared." *Cline*, 296 F.3d at 469. Therefore, Respondents, being age 40 or older, would be considered by this Court to be "older workers." As a result, Respondents contend there is no conflict with *Biggins*.

C. The Sixth Circuit's Opinion Is Not Inconsistent with Congressional Purpose and Intent.

Petitioner argues that the Sixth Circuit's opinion "is impossible to reconcile with Congress's purpose in enacting the ADEA." (See Petition, p. 13). The reason, Petitioner asserts, is "that the ADEA focuses on remedying discrimination against *older* workers arbitrarily based on their age." *Id*. (emphasis in original). Yet, this is precisely what occurred in the case below.

This Court has held:

> we begin with the understanding that **Congress "says in a statute what it means and means in a statute what it says there,"** *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254,

> 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992). As we have previously noted in construing another [statute], **when "the statute's language is plain, 'the sole function of the courts'"**--at least where the disposition required by the text is not absurd—"**'is to enforce it according to its terms.'**" *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989).

Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1, 6, 120 S.Ct. 1942, 1947, 147 L.Ed.2d 1 (2000) (emphasis added). This Court also held: "**"Our task is to give effect to the will of Congress, and where its will has been expressed in reasonably plain terms, that language must ordinarily be regarded as conclusive.**" *Negonsott v. Samuels*, 507 U.S. 99, 113 S.Ct. 1119, 1123, 122 L.Ed.2d 457 (emphasis added) (citing *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 570, 102 S.Ct. 3245, 3250, 73 L.Ed.2d 973 (1982)).

The Sixth Circuit applied this formula in its decision. It stated:

> courts must apply a statute as its language directs, not in accordance with a judicial supposition as to what the legislature might better have written. The application of these simple and settled canons easily determines the proper resolution of this case. Section 623(a)(1) of the ADEA reads:
>
> It shall be unlawful for an employer--

> (1) to fail or refuse to hire or to discharge *any individual* or otherwise discriminate against *any individual* with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age.

29 U.S.C. § 623(a)(1) (emphasis added). This language clearly and unambiguously forbids employers from defining the terms and benefits of "any individual['s]" employment based solely on his or her age. In § 631(a), Congress declared that "any individual" means those "individuals who are at least 40 years of age." 29 U.S.C. § 631(a). Thus, by the law's plain language, an employer may not discriminate against any worker age 40 or older on the basis of age. Those younger than 40 are not protected by the ADEA. *O'Connor v. Consol. Coin Caterers Corp.*, 517 U.S. 308, 312, 116 S.Ct. 1307, 134 L.Ed.2d 433 (1996).

Cline, 296 F.3d at 469 (emphasis in original). To repeat the most important line: **"by the law's plain language, an employer may not discriminate against any worker age 40 or older on the basis of age."** *Id.* (emphasis added).

As explained by the Sixth Circuit, the term, "older workers," is not mentioned in §§ 623(a)(1) or 631(a) or any other section of the statute. *Id.* at 469. Instead, the term used is "individual." Yet, even if those terms are synonymous, they both refer to the protected class, defined by the Act as those 40 years of age and older. In the case below,

the opinion did focus on remedying discrimination against individuals and/or older workers age 40 and older.

Regardless of whether you call them "individuals" or "older workers," §§ 623(a)(1) and 631(a) protect Respondents from illegal discrimination on the basis of age. Does Petitioner dispute that Respondents are "older workers" under the Act?

Petitioner's definition of older workers (or individuals) seems to change according to the circumstances. For example, if protected class members allege that employees older than them received preferential treatment due to their age, Petitioner apparently believes that their status has been altered and they are no longer older workers or individuals under §§ 623(a)(1) and 631(a). This argument is easier to make when using the term "older workers" because Respondents are not older than the employees who still receive their continued health insurance benefits. However, successful presentation of this line of reasoning diminishes when one uses the term "individuals" as set forth in § 631(a).[1]

When "individuals," is used, Petitioner's argument is rendered futile. This is because the logic espoused by Petitioner cannot hold muster in light of the plain statutory language. As stated by Sixth Circuit:

> To reach the conclusion for which the defendant argues, and that was found persuasive by the district court, we would be required to hold that the plain language of § 623(a)(1) and § 631(a) does not mean what it says when it refers to "any individual," but means, instead, "older workers." Thus, only "older workers," meaning those individuals who are at least 40 years of age and, in addition, relatively older than any other group of employees with whom they are compared, are protected. This *interpretive* reading of the statute led the district court to conclude that the ADEA does not prohibit an employer from discriminating, on the basis of age, against "any individual" who is a member of the ADEA's protected class, but only prohibits discrimination against those in the protected class who are "older" than the favored employees. We think the plain meaning of the statute will not bear that reading.

Cline, 296 F.3d at 469 (emphasis in original).

Petitioner claims that "the statement of purpose that Congress wrote into the ADEA makes clear that it was intended to benefit older workers in particular, not to deprive employers of the ability to favor older employees in ways not offered to younger employees." (See Petition, p. 13). Again, other than the vague reference to the term, "older workers," there is no statutory support, particularly in the enforcement or definitions sections of the Act, for this assertion.

In fact, the EEOC has issued a regulation interpreting the ADEA in a manner identical to the Sixth Circuit's opinion. 29 C.F.R. §1625.2(a) provides:

> It is unlawful in situations where [the ADEA] applies, for an employer to discriminate in hiring or in any other way by

[1] This is quite possibly the reason why Petitioner always uses the term, "older workers" rather than "individuals."

> giving preference because of age between individuals 40 and over. Thus, if two people apply for the same position, and one is 42 and the other 52, **the employer may not lawfully turn down either one on the basis of age**, but must make such decision on the basis of some other factor.

(emphasis added). Therefore, the EEOC also interprets the ADEA to encompass discrimination against anyone within the protected age group.

This regulation and interpretation still protects the entire protected class and thus the "older workers" as described in § 621(a)-(b). For example, assume a 41 year-old was discriminated against on the basis of age in favor of a 51 year-old. The former is still considered an older worker by the ADEA. Thus, by permitting that individual to bring suit, the Act would still serve to protect an older worker.

The plight of older workers is not limited to potential favorable treatment of younger workers over them. Older workers are generally at a disadvantage when faced with involuntarily having to find new employment or replace job benefits taken from them. Thus, the Sixth Circuit's decision does not conflict with congressional intent.

D. The Sixth Circuit's Decision Does Not Pose a Burdensome Impact.

1. Programs and Policies Will Not Be Threatened.

Petitioner contends that the "Sixth Circuit's decision poses a serious threat to a wide variety of employer programs

and policies that work to the benefit of older American workers." (See Petition, p. 19). For example, Petitioner fears that interpreting the ADEA as the Sixth Circuit did "threatens to invalidate threshold-age requirements for a variety of employee benefits." *Id.* at 20. In other words, Petitioner claims that in times of academic uncertainty, employers are faced with the need to scale back benefit programs. "In many cases, the choice [employers] face is between offering a retirement or other benefit only to some employees, and offering it to none." *Id.*

By way of example, Petitioner is concerned that employers "will be precluded from offering those older workers any preferential treatment or incentive." *Id.* at 20-21. Additionally, that law enforcement agencies will be precluded from relaxing rigorous physical fitness requirements for older personnel. These fears are unreasonable and unwarranted.

As stated above, 29 C.F.R. § 1625.2(b) permits the extension of additional benefits, such as increased severance pay, to older employees within the protected group if the employer has a reasonable basis to conclude that those benefits will counteract problems related to age discrimination. In Petitioner's examples, certain employees are given preferential treatment or additional benefits. This is permitted by 29 C.F.R. § 1625.2(b).

The difference in the present case is that Respondents' continued health insurance benefits were rescinded due to their age. Petitioner made eligibility of continued receipt of retirement benefits contingent on being 50 years of age or older. Since Respondents were not 50, they lost their benefits.

Such a contingency amounts to nothing less than a rescission of employment benefits to members of the protected class ages 40-49 solely to their age. Any way you examine it, it is age discrimination.

2. There Will Be No Increased Difficulty in Defending Age Discrimination Suits.

Petitioner argues that a significant consequence of the Sixth Circuit's decision is that there will be "a substantial increase in the difficulty of defending conventional age discrimination suits." (See Petition, p. 21). In support of this, Petitioner explains that in disparate impact cases, defendants may dispel an inference of age discrimination by demonstrating that older workers were treated better than the plaintiff. *Id.* This is also important, says Petitioner, in disparate treatment cases. *Id.* at 22. However, the present case is distinguishable from both disparate impact and treatment cases because it involves direct evidence of age discrimination.

Disparate impact and treatment cases differ from those involving direct evidence of age discrimination. Specifically, they deviate in the manner in which a Plaintiff must prove his/her case and how the employer must defend. *See Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 511, 122 S.Ct. 992, 997, 152 L.Ed.2d 1 (2002) (if a plaintiff is able to produce direct evidence of discrimination, he may prevail without proving all the elements of a *prima facie* case and the *McDonnell Douglas* framework does not apply). Therefore, the burden-shifting method of proof to which Petitioner refers does not apply to direct evidence cases. *Cline*, 296 F.3d at 475 ("this is a direct evidence age discrimination case and consequently does not rely on the *prima facie* test").

Accordingly, Petitioner's fears are not well-founded. This case involves direct evidence of age discrimination. Thus, "dispelling" of inferences in cases incorporating the *McDonnell Douglas* test will not be affected by the Sixth Circuit's decision.

III. CONCLUSION

For the reasons set forth above, Respondents assert that the Sixth Circuit's opinion is not in conflict with any decisions of this Court or United States courts of appeals, does not depart from the accepted and usual course of judicial proceedings or involve a question of federal law that has not been, but should be, settled by this Court. Accordingly, Respondents respectfully request that this Court deny Petitioner's Petition for a Writ of Certiorari.

Respectfully submitted,

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